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Glass Lewis Tightens Board Responsiveness Threshold, Adds Gender Diversity and Virtual-Only Meeting Policies in 2018 Guidelines

Shareholder Initiatives Guidelines Touch on Climate Change Scenario Analysis, Dual-Class Share Structures

Shortly before the Thanksgiving holiday, Glass Lewis released its 2018 policy guidelines for U.S. and Canadian companies as well as updates to its guidelines on shareholder initiatives. In addition to clarifying several existing policies, this year's policy update includes an important change regarding the threshold for board responsiveness along with new policies on board gender diversity, dual-class share structures and virtual-only meetings.

Board Responsiveness to Say-on-Pay and Director Elections

In a change that Glass Lewis notes was made "in light of evolving investor sentiment," in 2018, boards will be expected to demonstrate appropriate responsiveness to shareholder opposition on key proposals (notably compensation and director elections) of more than 20% of votes cast, rather than 25% as previously required. Historically, Glass Lewis has had a stricter threshold for what it deemed to be significant shareholder opposition to certain voting items than ISS, particularly in regard to say-on-pay vote results. Glass Lewis's policy change for 2018 further raises the bar companies must meet to avoid further scrutiny about their responsiveness to sizeable shareholder opposition.

Board Gender Diversity

Glass Lewis has added a new section to its policy guidelines covering gender diversity on boards. While the proxy advisor will not make voting recommendations for 2018 based on this change, beginning in 2019, Glass Lewis will recommend voting against nominating committee chairs (and potentially other members of that committee) of boards with no female members, absent sufficient rationale for not having any female board members or a disclosed plan to address the lack of diversity on the board. Glass Lewis may exempt smaller companies outside the Russell 3000 Index from its new approach.

Dual-Class Share Structures

In 2018, Glass Lewis will begin considering the presence of dual-class share structures in its evaluation of a company's corporate governance practices including in the year of its IPO or spin-off. While established companies with multiple share classes will likely not be materially affected by this new policy, companies that complete an IPO or spin-off with dual-class share structures will be more directly impacted.

At established companies, Glass Lewis will generally recommend shareholders vote for recapitalization proposals to eliminate dual-class share structures and against proposals to adopt a new class of common stock. For newly-public companies, in 2018, Glass Lewis will also consider the adoption of a dual-class share structure in addition to its current examination of other governance features that restrict shareholder rights in its overall evaluation of the new company's governance. This new analysis adds another consideration under the existing policy under which Glass Lewis may recommend taking action against a board for establishing anti-takeover provisions or for other features restricting shareholder rights upon initial listing on a public stock exchange.

Virtual Shareholder Meetings

While Glass Lewis believes that hybrid meetings (i.e. virtual meeting technology used to complement existing in-person shareholder meetings) can be useful, its new policy notes its concern that virtual-only shareholder meetings have the potential to restrict shareholders' ability to meaningfully communicate with management. While no voting recommendations will be affected by this change for 2018, in 2019, Glass Lewis will begin recommending against members of the governance committee at companies that plan to hold virtual-only shareholder meetings unless they have provided assurances that shareholders will be afforded the same rights and opportunities to participate as they would at an in-person meeting.

Director Commitments

Glass Lewis has added clarifying language on how it assesses director overcommitment in situations where the director serves in executive roles other than CEO (e.g., executive chair). While Glass Lewis has not made any changes to its directorship limits for public company executives (currently two total board memberships), when evaluating whether the limits will be applied, it will consider the specific duties and responsibilities of a director's executive role in addition to the company's disclosure regarding that director's time commitments. This clarification is likely intended to address situations in which a director serves as a part-time executive chair or other position with a similarly reduced time commitment.

Pay for Performance

While no changes were made to Glass Lewis's pay-for-performance model in its 2018 guidelines, Glass Lewis has added language to clarify how its grading system works—specifically, that unlike a school letter grade, a "C" grade does not indicate a significant pay-for-performance lapse but rather that pay and performance are generally aligned.

CEO Pay Ratio

As previously discussed in a blog post on its website, while Glass Lewis will display a company's pay ratio in its 2018 Proxy Papers, the figure will not be a determinative factor in its voting recommendations this upcoming year.

Shareholder Initiatives

Glass Lewis has expanded and codified its policy on climate change-related shareholder resolutions, noting that it will generally recommend in favor of resolutions for companies in certain extractive or energy-intensive industries that request climate change scenario analysis. Echoing its updated dual-class share policy guideline, Glass Lewis has codified that it will support shareholder initiatives to eliminate a company's dual-class share structure to allow for one vote per share. Finally, Glass Lewis will review proxy access "fix-it" proposals on a case-by-case basis: the proxy advisor will generally recommend votes against these resolutions at companies that reasonably conform to broad market practices but will recommend votes for the resolutions at companies with unnecessarily restrictive proxy access bylaws.

Takeaways for Issuers

Glass Lewis's updated policy guidelines echo shifting investor sentiment on hot-button governance issues including gender diversity and dual-class share structures. For issuers, the most impactful changes further emphasize the importance of director engagement around compensation and board composition as well as the necessity of clear and fulsome disclosure in proxy statements and other publicly available materials. While a number these new policies will directly impact proxy voting in 2018, several important guidelines will become operational in 2019, increasing the potential for voting recommendations contrary to management's recommendation in future years. Companies with identified risk in those emerging governance topics may want to consider taking action now to reduce the potential for adverse votes in coming years.

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